

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 SS-15 NSC-05 CIAE-00 INR-10 NSAE-00
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FM AMEMBASSY BONN
TO SECSTATE WASHDC 9892
INFO USMISSION USBERLIN
AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
USMISSION USNATO

C O N F I D E N T I A L SECTION 01 OF 02 BONN 12219

E.O. 11652: GDS
TAGS: PGOV, BQG
SUBJECT: LEGAL ISSUES CONCERNING BERLIN/HAMBURG
AUTOBAHN

REFS: (A) BONN 12129 (C) 75 BONN 14162
(B) 75 STATE 190960 (D) 75 USBER 1592
(E) 74 USBER 2316

1. IN RECENT BONN GROUP DISCUSSIONS, THE FRG HAS
ASKED THAT THE ALLIES CONSIDER THE LEGAL MODALITIES
OF ENSURING THAT THE PLANNED NORTHERN AUTOBAHN

IS A TRANSIT ROUTE UNDER THE FRG/GDR TRANSIT AGREEMENT.
IT IS EVIDENT THAT THERE IS NO UNANIMITY OF VIEW
WITHIN THE FRG ON THIS ISSUE (A PROMISED POSITION
PAPER HAS BEEN DELAYED FOR THAT REASON), AND THE
PRIMARY QUESTION APPEARS TO BE WHETHER THE ALLIES
SHOULD MAKE SOME APPROACH TO THE SOVIETS IN ORDER TO
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OBTAIN AT LEAST TACIT SOVIET CONCURRENCE THAT THE
AUTOBAHN IS TO BE COVERED BY THE TRANSIT AGREEMENT.
2. THE DEPARTMENT WILL RECALL THAT THIS ISSUE AROSE
IN 1974 AND 1975 IN CONNECTION WITH CONSIDERATION
OF THE NORTHERNAUTOBAH AND EW TRANSIT CROSSING
POINTS THE DEPARTMENT'S GUIDANCE ON THE TRANSIT
CROSSING POINT QUESTION (REF B) WAS THAT FOUR POWER

INVOLVEMENT IN NEGOTIATIONS OF THE NEW CROSSING POINTS WAS NEITHER NECESSARY NOR DESIRABLE SINCE THE QA PROVIDES SPECIFICALLY FOR THESE MATTERS TO BE HANDLED BY "COMPETENT GERMAN AUTHORITIES." THIS WAS ALSO THE POSITION OF THE BRITISH AND FRENCH (REF C). REFS

3. REFS (D) AND (E) CONTAIN A THOROUGH EXPLANATION OF THE LEGAL ISSUES INVOLVED. FOR PURPOSES OF CONVENIENCE, WE QUOTE PARAGRAPHS 2-4 OF REF (D) IN FULL:

"WE CONTINUE TO HOLD VIEWS EXPRESSED IN 74 USBER 2316 ON MEANS BY WHICH ADDITIONAL CROSSING POINTS FOR TRANSIT TRAFFIC MIGHT BE NEGOTIATED. SOVIET COMMITMENT IN PARA II OF QA IS VERY GENERAL: 'TRANSIT TRAFFIC BY ROAD, RAIL AND WATERWAYS THROUGH THE TERRITORY OF THE GDR OF CIVILIAN PERSONS AND GOODS BETWEEN THE WSB AND THE FRG WILL BE UNIMPEDED. DETAILED ARRANGEMENTS CONCERNING THIS CIVILIAN TRAFFIC, AS SET FORTH IN ANNEX I, WILL BE AGREED BY THE COMPETENT GERMAN AUTHORITIES.' ANNEX I MAKES MAJOR ELEMENTS OF TRANSIT REGIME MORE PRECISE BUT LIKEWISE PROVIDES THAT IT IS FOR COMPETENT GERMAN AUTHORITIES TO IMPLEMENT AND SUPPLEMENT ARRANGEMENTS.

"FOUR POWERS CONCLUDED THAT COMPETENT GERMAN AUTHORITIES FOR THIS PURPOSE WERE FRG AND GDR, AND CONFIDENTIAL

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TRANSIT TRAFFIC AGREEMENT (TTA) WAS FOLDED INTO FINAL QUADRIPARTITE PROTOCOL. TTA DOES NOT CONTAIN DEFINITIVE LIST OF TRANSIT FACILITIES, HOWEVER. INSTEAD ARTICLE 3 PROVIDES THAT 'TRANSIT TRAFFIC SHALL BE CONDUCTED VIA THE DESIGNATED BORDER CROSSING POINTS AND TRANSIT ROUTES.' GDR DECLARED IN PROTOCOL NOTE (PROTOKOLLVERMERK) AT SIGNATURE OF TTA THAT 'IN CONNECTION WITH ARTICLE 3 THE LEADER OF THE GDR DELEGATION ADVISES THAT THE PRESENT BORDER CROSSING POINTS FOR TRANSIT TRAFFIC AND TRANSIT ROUTES ARE DESIGNATED. AFTER THE AGREEMENT ENTERS INTO FORCE SUBSEQUENT TRAFFIC IMPROVEMENTS WILL BE POSSIBLE.'

"WE WOULD TAKE THIS AS CLEAR INDICATION THAT COMPETENT GERMAN AUTHORITIES ARE FRG AND GDR AND THAT THEY UNDERSTOOD AT TIME OF TTA THAT THEY MIGHT NEGOTIATE ON DESIGNATING FURTHER CROSSING POINTS WITHIN TTA REGIME. IT ALSO APPEARS CLEAR THAT SUCH ADDITIONALLY DESIGNATED CROSSING POINTS SHOULD ATTAIN QA PROTECTION WITHOUT THERE BEING ANY NEED FOR FURTHER QUADRIPARTITE ACTION. AS ALREADY NOTED, QA ITSELF LEAVES IT TO

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COMPETENT GERMAN AUTHORITIES TO WORK OUT IMPLEMENTING
ARRANGMENTS FOR TRANSIT TRAFFIC AMONG THEMSELVES.
LANGUAGE OF TTA INCLUDING GDR PROTOCOL NOTE WOULD
APPEAR TO ESTABLISH NOT ONLY THAT BORDER CROSSING
POINTS AND TRANSIT ROUTES IN EXISTENCE AT TIME TTA WAS
SIGNED ARE DESIGNATED IN SENSE OF QA, BUT THAT SUCH
FURTHER IMPROVEMENTS, I.E., ADDITIONAL CROSSING POINTS
AND TRANSIT ROUTES, AS MIGHT SUBSEQUENTLY BE AGREED BY
FRG AND GDR LIKEWISE WOULD BECOME 'DESIGNATED' WITHIN
SENSE OF QA. SINCE FOUR POWERS HAVE ALREADY ACCEPTED
TTA, INCLUDING PROTOCOL NOTE, THERE WOULD APPEAR TO BE
NO NEED FOR THEM TO REACH FURTHER AGREEMENT THAT
ADDITIONAL CROSSING POINTS OR TRANSIT ROUTES ARE
'DESIGNATED' IN ORDER FOR TRANSIT REGIME GUARANTEED BY
QA TO APPLY. WE WOULD NOTE THAT, UNDER THIS INTER-
PRETATION, TWO GERMAN STATES WOULD BE COMPETENT ONLY TO
IMPROVE, NOT TO CUT BACK TRANSIT FACILITIES. PARAGRAPH
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68 OF COMMENTARY ON QA PREPARED BY ALLIED EMBASSY
POLITICAL COUNSELORS APPEARS TO SUPPORT ABOVE CONCLU-
SIONS. IT NOTES THAT 'AS REGARDS THE PHRASE
'DESIGNATED ROUTES' IN PARAGRAPH 2(B) AND ELSEWHERE,
THESE ROUTES ARE CONSIDERED BY THE WESTERN NEGOTIATORS
TO BE THOSE NOW IN USE FOR SUCH TRAFFIC OR WHICH MAY BE
DECIDED UPON BY THE FRG AND GDR AT SOME FUTURE TIME."

4. IN THE RECENT BONN GROUP DISCUSSIONS, THE FRG
REPS HAVE OUTLINED FOR CONSIDERATION A FIVE-STEP
PROCEDURE TO BE COMPLETED PRIOR TO FINAL SIGNATURE
OF ANY AGREEMENT REACHED: 1) NOTIFICATION OF THE
ALLIES THAT NEGOTIATIONS ARE COMMENCING (COMPLETED,
REF A); 2) UPON SUCCESSFUL NEGOTIATION, INITIALING
OF THE AGREEMENT WITH THE GDR; 3) NOTIFICATION TO
THE ALLIES OF THE AGREEMENT; 4) ALLIED AUTHORIZATION
TO SIGN AND CONFIRMATION THAT THE NEW ROUTE IS COVERED
BY THE TRANSIT AGREEMENT; 5) SOME TYPE OF ALLIED
APPROACH TO THE SOVIETS.

5. ALL OF THE ALLIED REPS HAVE QUESTIONED THE NECESSI-
TY OR DESIRABILITY OF AN APPROACH TO THE SOVIETS.
THE FRG REPS AGREE THAT THE WESTERN SIDE WOULD BE
WORSE OFF IF THE SOVIETS REFUSED TO ACKNOWLEDGE THAT
THE NEW AUTOBAHN WERE COVERED BY THE TRANSIT AGREEMENT
THAN IF THE QUESTION HAD NEVER BEEN PUT. ON THE
OTHER HAND, THEY ANTICIPATE THAT THE QUESTION MAY BE
ASKED IN THE BUNDESTAG WHETHER THE NEW AUTOBAHN

IS CLEARLY COVERED BY THE TRANSIT AGREEMENT AND
WHETHER THIS IS ACKNOWLEDGED BY THE SOVIETS.

6. THE EMBASSY'S VIEW, BASED ON THE DEPARTMENT'S
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PRIOR INSTRUCTIONS AND THE EXHAUSTIVE DISCUSSION OF
THIS ISSUE IN 1974 AND 1975, IS THAT NO QUADRIPARTITE
COVER IS NECESSARY AS A LEGAL MATTER. WHETHER THE
FRG WILL CONSIDER IT ESSENTIAL FOR INTERNAL POLITICAL
REASONS, SINCE THE EXPECTED COST OF THE AUTOBAHN
(DM 1 BILLION IS AN ESTIMATE WE HAVE HEARD)
IS SO HIGH, WILL HAVE TO AWAIT FURTHER CONSIDERATION
IN THE FRG. STOESSEL

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